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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Public Copy

File: EAC 99 225 51544 Office: Vermont Service Center Date: OCT 18 2001

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(B)

IN BEHALF OF PETITIONER:

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

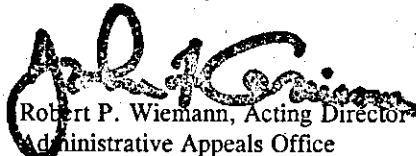
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a biotechnology firm. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a statistician/senior scientist. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

On appeal, counsel asserts that the director misinterpreted the statute. Counsel adds that the petition was clearly approvable, but that the adjudicating officer denied the petition because he or she resented that counsel had contacted the adjudicator's supervisor.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has

achieved documented accomplishments in an academic field.

Service regulations at 8 C.F.R. 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by:

(i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. Such evidence shall consist of at least two of the following:

(A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;

(B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;

(C) Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;

(D) Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field;

(E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or

(F) Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field;

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien; and

(iii) An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

(A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;

(B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or

(C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

The aforementioned Service regulation at 8 C.F.R. 204.5(i)(3)(i) lists six criteria, of which the petitioner must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. The petitioner claims to have satisfied the following criteria.

Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field.

Counsel cites three awards under this criterion. The beneficiary received a Best Student Paper Award and a Student Travel Award from the Eastern North American Region of the International Biometrics Society, and she made the dean's list at Chung-Yuan University.

The burden is on the petitioner to establish that the above constitute "major prizes or awards." If every prize so qualified, then the adjective "major" would serve no purpose.

Appearing on the dean's list is not a major prize or award, but rather a recognition of superior grades. The petitioner has submitted nothing to show that Chung-Yuan University's dean's list is the subject of international attention.

The remaining two awards both pertain to the beneficiary's attendance at a professional conference in 1996. The petitioner has not shown that this conference was one of such magnitude or significance that prizes presented there represent major prizes of international standing. The adjective "major" is meaningless if every prize is presumed to be a "major" prize.

Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members.

The petitioner asserts that the beneficiary is a member of the American Statistical Association, the International Biometrics Society, the International Chinese Statistical Association, the Institution of Mathematical Statistics, and the Caucus of Women in Statistics. The record contains some information about some of these associations, but nothing to establish that any of them require outstanding achievements as a condition of membership. Evidence in the record shows that membership in the Caucus for Women in Statistics is "open to all women and men who support its purposes and objectives." The International Biometric Society "welcomes as members biologists, mathematicians, statisticians, and others interested in applying similar techniques." These statements suggest open membership criteria, rather than restrictive ones that rely on outstanding achievements.

Evidence of the alien's original scientific or scholarly research contributions to the academic field.

Obviously, the petitioner cannot satisfy this criterion simply by listing the beneficiary's past projects, and demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research. Research work that is unoriginal would be unlikely to secure the beneficiary a master's degree, let alone classification as an outstanding researcher. Because the goal of the regulatory criteria is to demonstrate that the beneficiary has won international recognition as an outstanding researcher, it stands to reason that the beneficiary's research contributions have won comparable recognition. To argue that all original research is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

The petitioner submits several letters to establish the beneficiary's contributions. Some of the witnesses are faculty members of the University of Connecticut, where the beneficiary studied for over a decade before the filing of the petition. These individuals discuss ongoing projects which, they assert, "will have" a significant impact in the field. The confidence of the beneficiary's own professors in her future impact is not evidence of an existing international reputation as an outstanding researcher.

Dr. Charles Pidgeon, a professor at Purdue University as well the founder of the petitioning company, states:

[The beneficiary] is presently involved in a drug discovery project aimed at establishing the world's largest databases of molecular [sic] capable of predicting activity and toxicity. She is developing advance statistical methods to predict biological activity, developing customized software, and designing neural networks for chemical databases. Her

continuous involvement is vital to the projects, and it is my believe [sic] these projects will lead to tens of billions dollars of cost cutting in the Pharmaceutical industry and will also speed up the drug lead cycle.

Dr. Richard A. Duclos, Jr., a research biochemist at the Boston University School of Medicine, states that the beneficiary's "work has benefited research scientists like myself, clinical physicians, and others in academia as well as in industry." Dr. Duclos states that "[t]his project alone is certainly sufficient to warrant the national interest waiver." The petitioner, however, does not seek the national interest waiver, which pertains to immigrant classification under section 203(b)(2) of the Act. The classification which the petitioner seeks on the beneficiary's behalf demands international recognition as an outstanding researcher.

Dr. Marco Bonetti, postdoctoral fellow at the Dana-Farber Cancer Institute, does not discuss any specific contributions that the beneficiary has made to her field. Rather, Dr. Bonetti discusses the overall role of the biostatistician in medical research. Dr. Bonetti and the beneficiary both attended the University of Connecticut during the 1990s.

Another University of Connecticut alumna, Dr. Yir Gloria Yueh, assistant professor at Midwestern University, states that the beneficiary's "work in the field of biostatistics is literally known around the world." Dr. Yueh states that the beneficiary's "mathematical models have saved lives," and that "[a]t the University of Connecticut Health Center, she is involved in statistical algorithm development for laboratory and clinical experiments, which lead to predictive models of extreme accuracy."

Dr. Debajyoti Sinha, associate professor at the University of New Hampshire, states "I have known [the beneficiary] since 1993 when she was a student at the University of Connecticut." 1993 was the beneficiary's first full calendar year of doctoral study. Dr. Sinha, unlike other witnesses, describes specific projects that the beneficiary has undertaken:

[The beneficiary has] been involved in (1) analyzing the effect of bone marrow transplant treatment on survival in breast cancer patients, (2) studying the factors influencing survival in lymphoma . . . (3) assessing the affect [sic] of various palliative agents in a randomized clinical trial among bone marrow transplant patients, (4) evaluating factors influencing immune system function in HIV infection, etc.

Dr. Sinha concentrates not on the significance of the beneficiary's particular projects, but rather on the low number of trained experts in the beneficiary's field: "[The beneficiary] is one of

very few elite researchers trained in statistical modeling of the relationship between the applied dose . . . and the observed response. . . . [U]nfortunately, there are very few researchers with such expertise . . . coming out of our universities and research centers."

All of the above witnesses are from the United States, and most if not all have some ties to the beneficiary's work at the University of Connecticut. The only witness outside the United States is Professor Song-Sun Lin of National Chiao-Tung University in the beneficiary's native Taiwan. Prof. Lin states that he is "acquainted" with the beneficiary but does not elaborate. Prof. Lin asserts that the beneficiary "has been instrumental in the progress made in modeling methods for predictive prognosis of various medical protocols as well as other very important medical predictive methods."

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

Counsel indicates that the beneficiary had published seven papers as of the petition's filing date, with "four more" submitted for publication, but it appears that the four submitted articles were included in the total of seven, so that only three had actually been published as of the filing date. It is not clear how many of these published papers appeared in international journals.

The director requested additional information, stating that the visa classification sought "is reserved for aliens that stand apart in the academic community through eminence and distinction based on international recognition. In addition, the alien must have three years of experience in teaching and/or research." The director identified other necessary factors as well.

In response, counsel discusses telephone conversations between counsel and a supervisory adjudicator, and lists evidence already submitted. Counsel states that the petitioner has already submitted "letters from 8 experts of international repute." Certainly the record contains these letters, but no objective documentation to demonstrate the "international repute" of the individuals. Indeed, the witnesses themselves generally do not claim "international repute," and as noted above the witnesses are heavily concentrated at the University of Connecticut.

The petitioner has submitted an additional letter in response to the director's request. Dr. Barry K. Lavine, associate professor of Chemistry at Clarkson University, states:

[The beneficiary] is constructing the world's largest membrane binding database. . . . She is also developing advance

statistical methods to predict biological activity via customized software, e.g., neural networks for mining chemical databases.

Dr. Lavine asserts that the beneficiary is "vital" and "irreplaceable" in this project. The U.S. employer's reliance on the beneficiary's work is not evidence that the beneficiary is internationally known as an outstanding researcher. Like previous witnesses, Dr. Lavine makes some arguments which appear to be intended to support a request for a national interest waiver of the job offer requirement pertaining to a different visa classification.

The director denied the petition, stating that the beneficiary's record of achievement does not "elevate her to the level of a researcher who has been recognized internationally as an outstanding researcher."

On appeal, counsel states that the director "is clearly wrong in discounting the awards [documented in the record] simply because they were not 'major international awards for outstanding achievements.'" Counsel states:

8 CFR 204.5(i)(3)(A) requires, "Documentation of the alien's receipt of major prizes or awards in the academic field which require outstanding achievements of their members."

There is nothing in this regulation that requires that the awards be "international" or that they be for "outstanding achievement." . . . The examiner here is actually reworking the statute to have it sound like more is required than actually is. This is clearly a misreading of the statute, and an error of law.

8 C.F.R. 204.5(i)(3)(A) is not "the statute," but rather a regulation which implements the statute. The statute itself is entirely silent on the issue of prizes. The statute itself does, however, plainly require evidence that "the alien is recognized internationally as outstanding in a specific academic area" (section 203(b)(1)(B)(i) of the Act). The implementing regulation at 8 C.F.R. 204.5(i)(3) echoes this requirement, calling for "[e]vidence that the professor or researcher is recognized internationally as outstanding." The "international" requirement is thus firmly established.

Also, while counsel accuses the Service of "reworking the statute," it is counsel who has demonstrably misquoted the cited regulation. The actual wording of 8 C.F.R. 204.5(i)(3)(A), cited further above, requires "[d]ocumentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field." The

petitioner has not met its burden of showing that the beneficiary's prizes are internationally recognized as major awards.

Counsel asserts on appeal that only a minority of those who wrote letters on the beneficiary's behalf have actually stated that they worked with her. Many of the letters are silent on this issue, so certainly it is not self-evident that all of the witnesses worked with the petitioner, but counsel volunteers no new evidence to rule out past collaboration between the beneficiary and the witnesses. It remains that the witnesses do not all explain their connections with the petitioner. For instance, while Dr. Marco Bonetti makes no mention at all of how he is aware of the petitioner's work, he obtained his Ph.D. in Statistics in 1996 from the University of Connecticut, while the petitioner was a doctoral student in the same department of the same university.

Counsel asserts that, even if these individuals have worked with the petitioner, "if the top scientists in their fields work with, or use the work of a person such as [the beneficiary], that is surely an important fact." This assertion presumes that the witnesses are in fact the top scientists in their fields, which the witnesses themselves do not claim.

Furthermore, as noted above, almost all of these witnesses are in the United States, when the statute and regulations demand evidence of international recognition. The very act of studying in two different countries does not confer international recognition; otherwise, every alien who obtained a degree from a U.S. university would qualify, which is clearly an overly broad application of what is intended as a restrictive visa classification.

Counsel states that "nothing in the statute or regulations requires that the letter writers have never met the beneficiary." Still, both the statute and the regulations require evidence of international recognition. A reputation which is entirely or mostly limited to one's own collaborators and superiors does not have the required breadth.

Counsel protests that the director ignored the petitioner's four papers that had been submitted for publication. The plain wording of the regulation calls for material that has appeared in international journals. Still-pending submissions have not appeared in this way.

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results

of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career."

Counsel states that the director "also ignored the fact that [the beneficiary] was involved in 4 patent/grant applications, that she had 6 international presentations, that she was a member of 5 honorary societies and that she had won three awards." The burden is on the petitioner to establish the significance of these accomplishments. Much of this evidence has already been discussed above. Unless and until the petitioner or counsel is able to document that involvement with a patent application (for instance) is inevitably a hallmark of international recognition, we are not obliged to accept counsel's argument to that effect. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel describes his contact with a supervisor at the Service Center, and states "we are forced to appeal an obviously approvable petition because an angry examiner has dug in his/her heels [sic] because we called the supervisor. There is no legal reason for denying this [petition]." We have discussed the evidence above. Counsel's speculative and conjectural claim that a petulant adjudicator denied the petition out of resentment has no effect on the reading of that evidence. Whatever the adjudicator's state of mind may or may not have been at the time of adjudication, we simply do not find sufficient evidence in the record to establish that the beneficiary is internationally recognized as an outstanding researcher.

Apart from the central ground for denial, review of the record reveals other issues with a bearing on the petition's approvability.

As noted above, 8 C.F.R. 204.5(i)(3)(ii) requires:

Evidence that the alien has at least three years of experience in . . . research in the academic field. Experience in . . . research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and . . . if the research conducted toward the degree has been recognized within the academic field as outstanding.

The petition was filed on July 22, 1999, and therefore the beneficiary must have had at least three years of qualifying experience prior to that date. The petitioner hired the beneficiary in December 1998, eight months before the filing of the

petition. The petitioner must establish another two years and four months of qualifying experience.

The beneficiary received her baccalaureate degree in 1985 at Chung-Yuan University, and according to counsel, "[f]rom there, [the beneficiary] came to the University of Connecticut." The beneficiary received three degrees at the University of Connecticut, two master's degrees in 1988 and 1992, and a doctorate in 1998. The evidence suggests that the petitioner was working on advanced degrees continuously from 1985 until 1998.

By regulation, the beneficiary's work during the period of her studies at the University of Connecticut cannot count toward the requirement of three years of experience unless the petitioner demonstrates that the petitioner's student work has been judged to be outstanding. For reasons explained above, the record does not establish an outstanding reputation, and even then many of the witness letters discuss the beneficiary's current work for the petitioner rather than her student work.

The question also arises as to whether the beneficiary's work constitutes "research" as such. Dr. Marco Bonetti states in his letter that "the biostatistician is not merely a technician, but rather a researcher in his or her own right," but he also states in the same letter that the role of a biostatistician is to provide "assistance" to "the scientist who is conducting the actual research." Descriptions of the beneficiary's duties appear to focus on the assembly of computer databases by collating and organizing data given to her by researchers, thereby processing information rather than actually generating it.

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in the field of statistics. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.